

Telecommunications Policy Review Panel
Final Report 2006



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Cover: 10%
Inside pages: 30%

Licensing: International Submarine Cable

The international submarine cable licences regime was updated in 1998 as part of Canada's commitments under the General Agreement on Trade in Services, whereby Canada agreed to permit, as of October 1, 1998, foreign investment of up to 100 percent for operations conducted under an international submarine cable licence.⁷¹ This too was part of the termination of the monopoly previously held by Teleglobe Canada. The effect of this termination is that there now are no significant restrictions on entry into the international submarine cable market. In addition, the Canadian ownership and control restrictions are not relevant with respect to the ownership or operation of international submarine cables.⁷²

Although ss. 19.(1) of the Act states that a licence "may" be granted by the Minister, there appears to be no reason for this discretion based on telecommunications policy, since the original intent of limiting entry into this market no longer exists. Moreover, although ss. 19.(2) provides that "An international submarine cable licence may contain such conditions as the Minister considers are consistent with the Canadian telecommunications policy objectives," the terms that have been prescribed do not impose any substantive obligations on the operators of cables.⁷³ The requirement in the conditions to provide information can be addressed in the recommended registration regime for the CRTC. The requirement in the conditions to demonstrate compliance with the environmental laws is duplicative in the sense that the relevant environmental legislation binds submarine cable operators in any event.

The provisions in the *Telecommunications Act* relating to submarine cables do not apply to cables situated entirely under fresh water.⁷⁴ This means that they have no application to cables running between Canada and the U.S. via the Great Lakes. With the termination of Teleglobe Canada's monopoly for Canada-overseas telecommunications traffic in 1998, there no longer appears to be a policy or regulatory basis upon which to make this distinction.

The Panel sees no justification for the continuance of these statutory provisions and recommends repealing s. 17 to 20 and ss. 22.(2) of the *Telecommunications Act* and related sections⁷⁵ and the *International Submarine Cable Regulations* and replacing them with the CRTC registration regime recommended above.

Recommendation 9-26

The requirement to obtain a licence under the *Telecommunications Act* to construct or operate an international submarine cable should be repealed and replaced with a simple registration regime.

⁷¹ The relevant provisions of the *Telecommunications Act* are set out in s. 17 to 20 and ss. 22.(2).

⁷² *Telecommunications Act*, para. 16.(5)(a).

⁷³ *International Submarine Cable Licences Regulations*, SOR/98-488.

⁷⁴ See the definition "international submarine cable" in s. 2 of the *Telecommunications Act*.

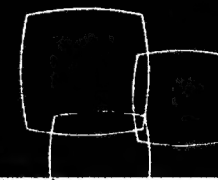
⁷⁵ These would include the definition of "international submarine cable" in s. 2 and para. 16.(5)(a). Subsection 73.(1) would have to be reworded to remove the reference to s. 17.



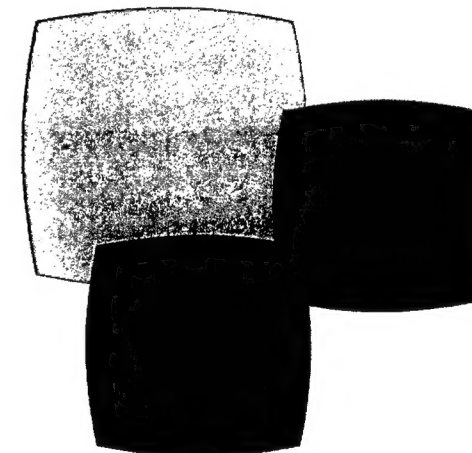
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ARCTIC FIBRE CABLE PROJECT



International Submarine Cable Licensing



March 1, 2012

Canada

IND 9854-12

Telecommunications Act

- **S. 17 of the Telecommunications Act: Licence is required to construct and operate international submarine cables landing in Canada or going through Canadian waters.**
- **S. 19 of the Act: Proponent must file an application (letter form) with the Minister of Industry for a licence (S. 19 of the Act)**
- **S. 16 (5) of the Act: International submarine cables are not subject to Canadian ownership rules**



International Submarine Cable Licences Regulations

- S. 2 of the regulations: provides that an applicant may apply for a terminating or through licence as defined in S. 1 of the regulations.
- S. 3 of the regulations: prescribes that an applicant is eligible to hold a terminating licence if it controls the administration and operation of the cable including its associated works or facilities.
- S. 4 (1) of the regulations: prescribes the information required in the application for a licence to the minister of Industry.



Information Required in the Application

- **Name of applicant**
- **Confirmation that applicant controls the administration and operation of the cable**
- **Head office and Canadian addresses**
- **Date and place of incorporation**
- **Origin and intended route with connection points to Canadian facilities**
- **Canadian Environmental Assessment Act compliance**
- **Term requested for the licence (maximum 10 years)**
- **Capital costs and technical capabilities of the project**



Canadian Environmental Assessment Act (CEAA) Requirements

- S. 5 and the Law List of the CEAA: requires an Environmental Assessment Screening (EAS) for international submarine cables.
- EAS is conducted by the proponent: Report is usually prepared by a well know environmental consultant firm.
- IC is a responsible authority, other authorities include Canadian Coast Guard, National Defense, Fisheries and Oceans, Environment Canada.
- A Federal Coordinator is appointed, usually IC.



EAS Process

- **Purpose of EAS:** To determine if project is likely to significantly impact the environment and have mitigation measures in place.
- **1st step:** Preliminary meeting with key stakeholders to exchange information (recommended early).
- **2nd step:** Provide project description and scoping documents to Federal Coordinator.
- **3rd step:** Proponent conducts consultations with key stakeholders i.e. fishers and aboriginals.
- **Final EAS report** is approved by IC. Proponent includes the report in the licence application.





Other Authorities

- Other licences or permits may also be required by other authorities - i.e. Canadian Coast guard, Fisheries and Oceans, Aboriginals Affairs and Northern Development Canada, territorial, provincial and municipal governments, and the Nunavut government.
- Applicants are responsible to ensure compliance with other authorities.



Links to Legislations and Regulations

- Telecommunications Act: <http://laws-lois.justice.gc.ca/eng/acts/T-3.4/index.html>
- International Submarine Cable Licences Regulations: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-98-488/index.html>
- Canadian Environmental Assessment Act: <http://laws-lois.justice.gc.ca/eng/acts/C-15.2/index.html>



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Frequently Asked Questions

International Submarine Cable Licences Regulations

1. What is the purpose of this regulation?

Pursuant to section 17 of the *Telecommunications Act* (the "Act"), a licence is required to construct or to operate an international submarine cable that comes under Canadian jurisdiction. Subsection 19(1) of the Act provides that "the Minister of Industry may, on application, issue an international submarine cable licence to a person that is eligible under the Regulations to hold the licence." The *International Submarine Cable Licences regulations* (Regulations) support the policy objective of an orderly development of Canada's telecommunications system.

2. What are the key elements of this regulation?

The issuance of international submarine cable licences is administered by Industry Canada. Section 2 of the regulations provides that a person may hold two classes of international submarine cable licences, namely a terminating cable licence and a through cable licence. A "terminating cable licence" is for cables that land in Canada and interconnect with Canadian telecommunications facilities. A "through cable licence" is for cables that pass through Canada (for example, through ocean waters under Canadian jurisdiction), but which do not interconnect with telecommunications facilities in Canada.

Section 3 of the regulations provides that a person is eligible to hold a terminating cable licence "if the person controls the administration and operation of the international submarine cable in respect of which the licence is to be issued, including its associated works or facilities."

- In order to obtain either a terminating cable licence or a through cable licence, an applicant must file an application with the Minister of Industry that includes a set of

prescribed information. The information that must be included with a licence application is set out in section 4 of the Regulations and includes:

- The name of the applicant and the address of the applicant's head office, or in the absence of a head office in Canada, the address in Canada where the applicant may be effected;
 - If the applicant is a corporation, the province, state or country where the applicant was incorporated and the date of incorporation;
 - The origin and intended route of the international submarine cable and, in the case of an application for a terminating cable licence, the points where the cable will connect to telecommunications facilities in Canada;
 - Documentation indicating compliance with the requirements set out in the *Canadian Environmental Assessment Act*;
 - The term being requested for the licence, which may not exceed 10 years; and
 - Information relating to the capital costs and technical capabilities of the international submarine cable and its associated works and facilities.
- The applicant is also required to pay a fee of \$100 at the time of application for the first term of the licence. The licensee must also pay a fee of \$100 in each subsequent year of the term of licence.

3. How does this regulation affect Canadian businesses?

The Regulations are concise written in plain language with fees of \$100 annually for the submarine cable operator businesses.

4. What is the timeline for implementation?

The regulations have been in force since 1998.

5. Where can I get more information?

You may obtain more information by contacting officials of the Telecommunications Policy Branch at 613-998-4310 or by email at TelecomPol@ic.gc.ca
(<mailto:TelecomPol@ic.gc.ca>)

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2015-02-13

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| Date | |
| March 25, 2014 | |
| Telephone/FAX - Téléphone/Télécopieur | |
| 613-946-7648 | 613-954-5356 |

MEMORANDUM NOTE DE SERVICE

TO/DEST.: **Thierry Husson, Senior Advisor, Telecommunications Policy Branch,
Strategic Policy Sector, Industry Canada**

FROM /
ORIG : **Guy Robichaud, Counsel, Industry Canada Legal Services**

SUBJECT /
OBJET :



Bonjour Thierry,

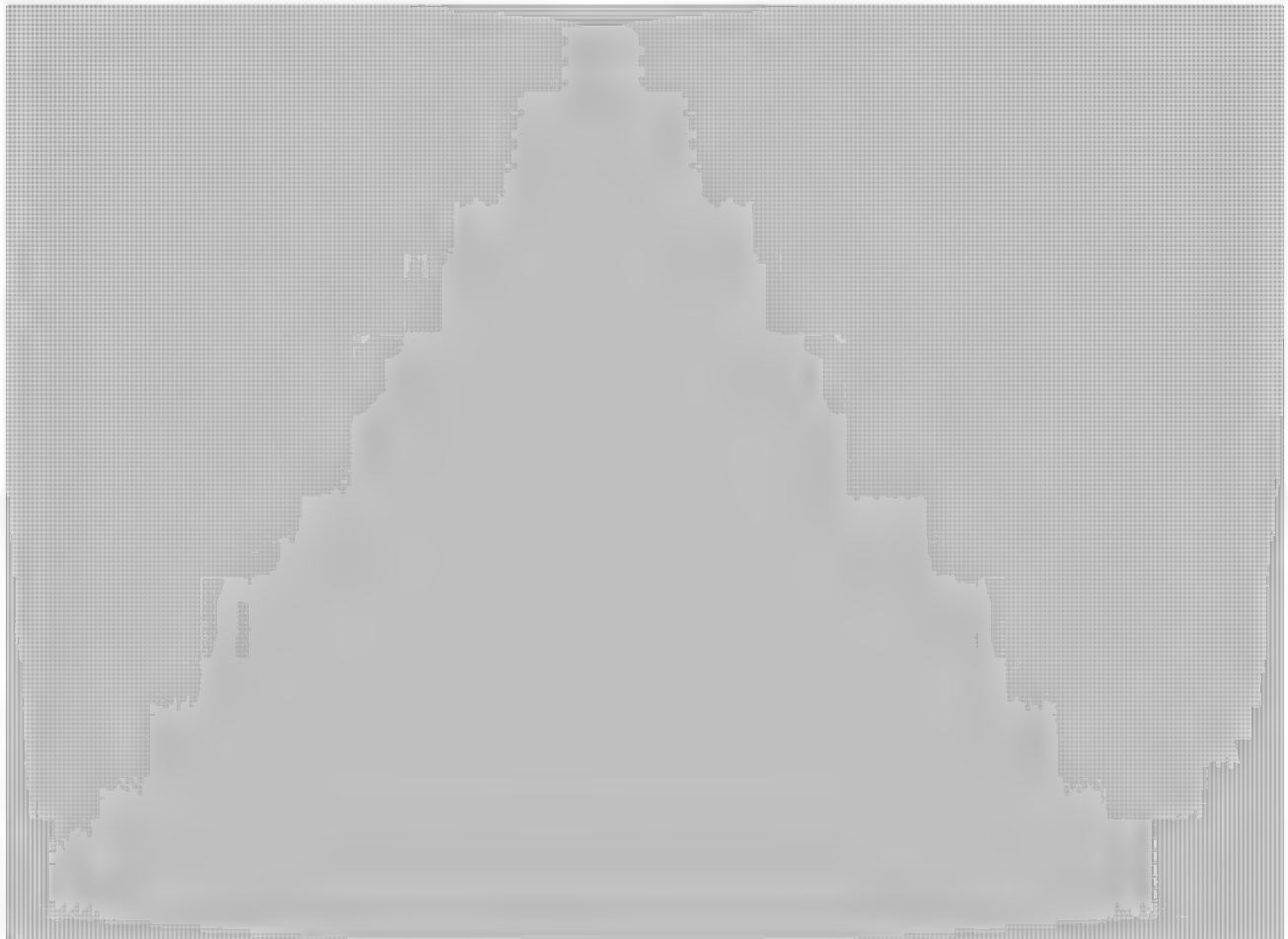


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Do not hesitate to contact me if further assistance is required in this matter, or if you have additional questions.

Kind regards,

Guy Robichaud

cc. Pamela Miller, Director General, Telecommunications Policy Branch, IC
Adam Scott, Director, International Telecommunications Policy and Coordination
Diane St-Arnaud, Senior Counsel, Manager, Telecom Law Group, ICLS

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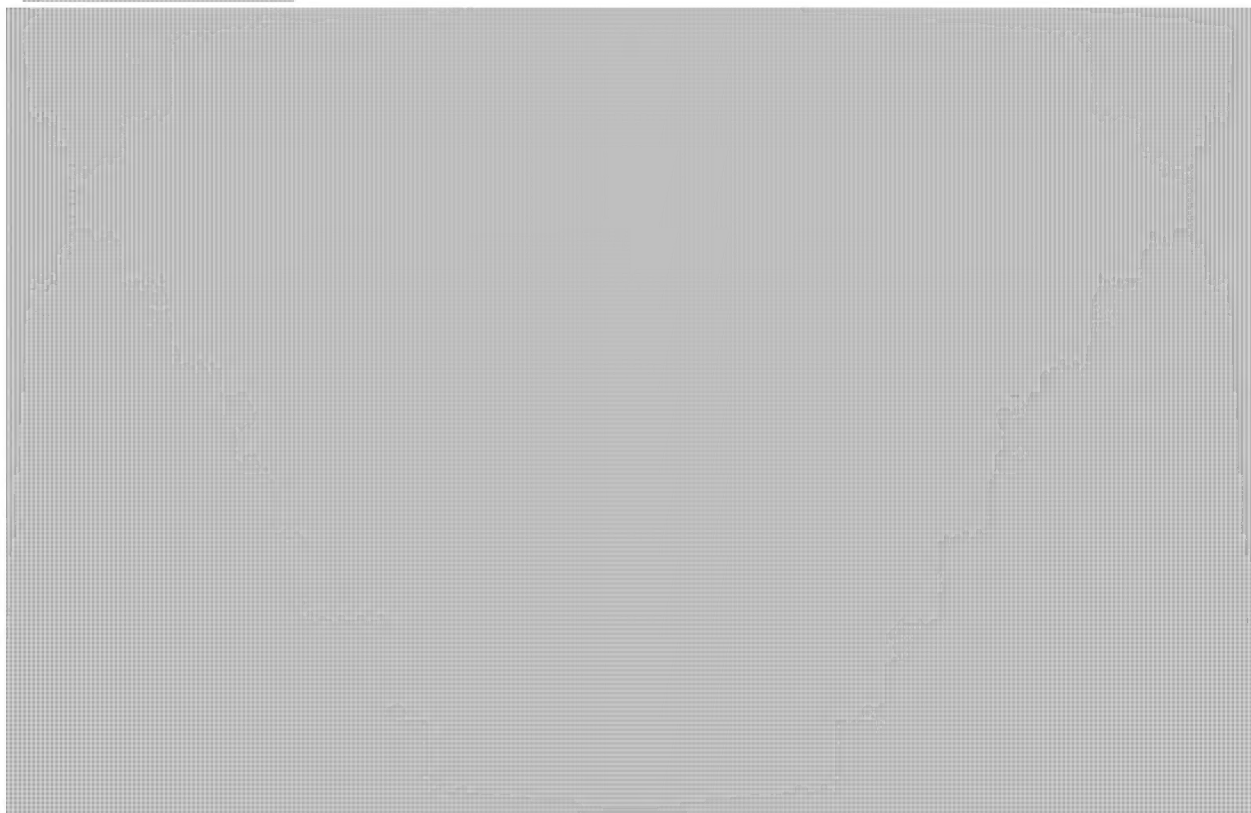
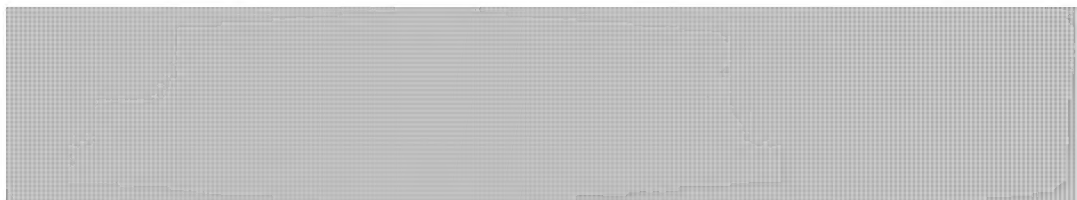
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MEMORANDUM NOTE DE SERVICE

TO/DEST.: **Thierry Husson, Senior Advisor, Industry Framework Policy**

FROM /
ORIG: **Guy Robichaud, Counsel, Industry Canada Legal Services**

SUBJECT /
OBJET :



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I trust that this is satisfactory and useful for your current purposes.

Kind regards,



Guy Robichaud

Enclosure:



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